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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-first session

SUMMARY RECORD OF THE 33RD MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 November 1999, at 3 p.m.

Chairperson : Mr. RIEDEL (Vice-Chairperson)
later : Mrs. BONOAN-DANDAN (Chairperson)

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The meeting was called to order at 3.05 p.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

1. Mr. TEXIER expressed surprise that documents submitted by the Office of the United Nations High Commissioner for Refugees concerning the situation of refugees in Armenia and Mexico had been withdrawn from Committee members' files. That action raised two questions. First, what was the nature of documents communicated to Committee members by the United Nations specialized agencies? If they were confidential, members should not receive them, inasmuch as the deliberations of the committee were public. Second, what should be inferred from the fact that the Secretary of the Committee had taken it upon himself to remove documents that had been in members' files since the beginning of the session?

2. The CHAIRPERSON said the important question raised by Mr. Texier would be subsequently taken up at a private meeting.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of Argentina (E/1990/6/Add.16; HRI/CORE/1/Add.74 (core document); E/C.12/Q/ARG/1 (list of issues to be raised); written replies to the list of issues prepared by the Argentine Government (document distributed in the meeting room without a symbol, in Spanish only))

3. At the invitation of the Chairperson, the members of the Argentine delegation took places at the Committee table.

4. Mrs. NASCIMBENE de DUMONT (Argentina) said that no representatives of the ministries that had participated in the drafting of the report had been included in the delegation, owing to the transfer of powers in progress following the 24 October elections which had been won by a coalition of the main opposition parties. By way of introduction, she would summarize the manner in which economic, social and cultural rights in Argentina had evolved since the Committee's consideration of Argentine's previous report in November 1994, in the light of the global economic context.

5. As the International Monetary Fund (IMF) had recently observed, the 1990s had not been a good decade for global economic development and had shown how vulnerable the developing countries' economies were to external crises. Since the submission of its previous report in 1994, Argentina had been affected by three successive external crises: the Mexican crisis (1994-95), the Asian-Russian crisis (1997-98) and the devaluation of the Brazilian currency (1999).

6. The Mexican crisis, basically regional in scope, had prompted a serious economic recession in Argentina, which had lasted over a year, triggering inter alia a decline in production, an increase in unemployment and a reduction of tax revenue. The Asian-Russian crisis, the effects of which had been felt worldwide, had undermined investor confidence in the economies of emerging countries, with a consequent rise in interest rates and slowing down of industrial activity in Argentina, as well as a serious deterioration of its

external trade, owing to the slump in the prices of Argentina's principal exports (wheat,
oil-producing plants and petroleum). Lastly, over the previous 12 months the Argentine economy had been hard hit by the effects of the economic problems of Brazil, its main Southern Common Market (MERCOSUR) partner.

7. The effects of those successive crises were still being felt in Argentina. Its gross domestic product (GDP) had fallen, investment levels had dropped and job creation had flagged. The increase in international interest rates had pushed up Argentina's foreign-debt payments. A sluggish world economy and cheap raw materials made it difficult to restructure exports to compensate for Brazil's reduced demand. Small and medium-sized enterprises - the most dynamic job-creators - had been particularly hard hit. When examining the situation of economic, social and cultural rights in Argentina or other developing countries, the Committee should bear in mind all the economic conditions affecting them.

8. The CHAIRPERSON, observing that the Argentine Government's written replies to the questions on the list of issues (E/C.12/Q/ARG/1) were available only in Spanish, invited the Argentine delegation to summarize briefly the replies to questions 1-7 of section I, entitled "General Information".

9. Mrs. NASCIMBENE de DUMONT (Argentina), referring to question 1, said there were two methods of poverty assessment. So-called unmet basic needs were assessed every 10 years at the time of the national census. At the time of the latest census in 1991, 6,427,000 people, or 19.9 per cent of the population, were living in households where their basic needs were unmet, 44 per cent of them children under 15 years of age. The other method for measuring poverty was unconnected with the census and was applied by means of surveys conducted by the National Statistics and Census Institute on the basis of household incomes. A household was considered to be poor when the family's total income was insufficient for it to procure a specified range of essential goods and services. In 1989, when Argentina had been hit by hyperinflation, household-income estimates had shown that 38.2 per cent of households and virtually half the population (47.3 per cent) were poor. That percentage had begun to decline in 1991, reaching a low in 1994 before climbing again as a result of the external economic crises. In May 1998, 17.7 per cent of the population had been considered poor or indigent.

10. No centralized data were available on the indigenous population; what information there was had either been furnished by the National Institute of Indigenous Affairs (INAA) or had emerged from the household surveys. The rights of indigenous inhabitants had been officially recognized for the first time in the Constitution that had come into effect with the 1994 constitutional reform. A variety of sources indicated that Argentina had an indigenous population of between 800,000 and 1 million from 17 ethnic groups spread out over 15 provinces and accounting for 1.5 per cent of the total population. During the previous 20 years many indigenous inhabitants had abandoned the countryside and settled in the towns, where they lost their cultural identity, making them more difficult to survey. The competent bodies were looking into ways of counting the indigenous population during the 2000 census.

11. With regard to question 3, according to the Constitution the Covenant had constitutional status so that there was no possibility of conflict. In reply to

question 4, she said the Argentine Government had certainly acted on the Committee's concluding observations on the previous report and had ratified many international human rights instruments. Concerning question 5, the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights was currently being studied by the competent government bodies, which had not yet reached a final decision. However, Argentina agreed, in principle, that it was a good idea for international bodies to examine complaints from individuals. Indeed, the Argentine authorities had already ratified the Optional Protocol to the International Covenant on Civil and Political Rights and had recognized the jurisdiction of the Committee against Torture in accordance with article 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. Regarding information and publicity concerning the rights set forth in the Covenant, Committee members could refer to the written replies containing a very long list of all the activities organized by various ministerial departments, institutes and bodies responsible for the defence of human rights, in the form of lectures, courses and information campaigns. Turning to question 7, she said that all the competent provincial ministries and institutions had participated in the preparation of the second periodic report, but that the non-governmental organizations (NGOs) had not taken part. However, once completed in April 1997, the report had been published and transmitted to the NGOs so that they could submit their comments to the Committee.

13. Mr. SADI remarked that the existence of economic difficulties or crises, whether internal or external, could not be used to justify any decline in the exercise of human rights. In the first place, all countries were exposed to difficulties or one time or another; secondly, when faced with difficulties it was incumbent on the country's leaders to set macroeconomic priorities precisely in order to guarantee the broadest possible enjoyment of rights. As a case in point, it would be helpful to the Committee to know the Argentine Government's priorities, so as to be able to determine whether its policy was consistent with Covenant requirements. Countries must also bring defence of the rights enshrined in the Covenant to the fore in their negotiations with international financial institutions such as the World Bank.

14. He would like to know precisely what the indigenous inhabitants' position was in society and whether any of them ever succeeded in occupying high-level posts. On the subject of the extreme poverty affecting a large proportion of the population, he asked whether the economic crises had created rather than exacerbated the situation. Furthermore, noting that the Covenant was rarely, if ever, invoked before the courts, he felt that the Argentine authorities might do more to ensure that people knew how to avail themselves of their rights. Had the Covenant ever been invoked in connection with the violation of economic rights?

15. Mr. CEVILLE noted with satisfaction that the Covenant and other international human rights instruments enjoyed constitutional status in Argentina, but requested more concrete information on the possibility of invoking them before the courts. He would like to know whether defendants had easy access to the machinery of justice, whether facilities such as public defenders and mediators existed in sufficient numbers, whether court proceedings were prompt and effective and whether victims were compensated.

16. Mr. TEXIER said he had two suggestions to make. First, he called upon the State party to give more publicity to the Covenant. Indeed, the publicity required in all countries in order to ensure awareness that the Covenant could be invoked before the courts was a task not only for the Committee, but also for the States themselves, which were called upon to train judges and inform the public at large, notably by disseminating the text of the Covenant in universities and schools. Secondly, the report submitted to the Committee was less useful if it was confined to governmental circles. Like the Committee's observations, it should also serve to establish dialogue between the State and NGOs and trade unions.

17. Mr. ANTANOVICH stressed the paucity of the information furnished on the indigenous population - he preferred the term "peoples", since all peoples, by virtue of article 1 of the Covenant, had the right to self-determination. Problems relating to ethnic minorities existed and were a source of concern in virtually all countries. He would also like the delegation to explain why economic growth had not been accompanied by poverty reduction in Argentina.

18. Mr. AHMED recalled that in August 1998 the Sub-Commission on the Promotion and Protection of Human Rights had adopted a draft resolution, the text of which was to be incorporated in resolution 1998/14, in which it had affirmed that situations of poverty amounted to a denial of the rights of individuals. He was concerned that Argentina, a traditionally rich country, currently posted the highest unemployment rate in all Latin America. Calling attention to an excerpt from the 1998 report of Social Watch cited in the country analysis and denouncing the shrinking of the middle class and increasingly precarious living conditions, he asked what measures had been put in place, or were envisaged, by the Government to counter the rising tide of poverty and the cuts in social security benefits.

19. Mr. HUNT noted with satisfaction that economic, social and cultural rights could be invoked in judicial and quasi-judicial proceedings (including through the Office of the Under-Secretary for Human and Social Rights). He would like to know whether those rights were systematically taken into consideration in policy formulation; in other words, were there persons in the various ministries who ensured that new policies were consistent with the Covenant?

20. Mr. RATTRAY remarked that the economic crisis could not be used to justify failure to apply certain provisions of the Covenant. On the contrary, it was in times of crisis that rights needed to be more closely protected and that the Covenant fully came into its own. He also requested further details on the status of the Covenant vis-à-vis the domestic legislation. While observing that the Covenant had constitutional status in Argentina, he would like to know whether it was in any way restricted by the Constitution. Lastly, he was pleased to note that the Supreme Court had recognized that equal treatment had meaning only when conditions were equal, and asked whether Argentina had already considered taking affirmative action in favour of vulnerable and disadvantaged groups, especially the indigenous population.

21. Mrs. BONOAN-DANDAN took the Chair.

22. Mr. THAPALIA requested unemployment figures disaggregated by sex and region, as well as further information on specific government initiatives to

reduce poverty and on the obstacles encountered. Statistics on such issues as wages, employment and domestic violence would give the Committee a better idea of de facto equality and non-discrimination in Argentina.

23. Mrs. NASCIMBENE de DUMONT (Argentina) stressed that her Government, like so many others, was trying to adapt to the current global situation and open up the country's economy, which it could not do without loans. The international financial institutions, such as the IMF, imposed certain conditions on the country when loans were being negotiated, especially in the fields of employment and social security. It would therefore be helpful if the Committee would share its criticisms,

suggestion and concerns not only with delegations, but with institutions like the IMF as well.

24. On the subject of the indigenous peoples, she affirmed that 1994, with its constitutional reform, had been a turning point. The reparation process, which included restitution of land, promotion of indigenous cultures and creation of bilingual schools, was in its early stages but was well in hand.

25. The phenomenon of extreme poverty was not new to Argentina, and periods of hyperinflation, political instability and economic crisis had given rise to thorny structural problems. There was no single answer, but the theme of poverty was indeed a priority at all levels of the State: more than 185 different plans and programmes to help disadvantaged persons were currently in progress throughout the country. Numerous courses, workshops and awareness-raising campaigns were also being conducted to make people more familiar with the international human rights instruments.

26. As to public defenders, 183 had been allocated to the capital and the provinces in an effort to broaden and facilitate access to justice. Replying to a question from Mr. Texier, she said that human rights courses, including the international human rights instruments to which Argentina was a party, had been provided for judges and magistrates. She welcomed Mr. Texier's suggestion of initiating dialogue between the provincial authorities and NGOs, a suggestion that might usefully be repeated in the Committee's concluding observations.

27. She said that the increase in Argentina's revenue had not been accompanied by a reduction in poverty owing to an essentially structural problem. Extreme poverty was indeed a denial of human rights, and some 3 million Argentines lived below the poverty line. However, the authorities had introduced measures social support measures in favour of the affected population, notably in the form of job and social security schemes relating basically to the informal sector of the economy. The Government was also studying an immediate emergency plan to assist the
3 million Argentines living below the poverty line.

28. In conclusion, her delegation would transmit to the Committee at a later date precise information on the rulings of the Supreme Court and lower courts in which the Covenant had been invoked.

29. Mr. THAPALIA reiterated his question to the Argentine delegation as to whether it could provide statistics disaggregated by sex in particular, and his

request that it indicate precise corrective measures taken by the Government. What was the inflation rate in Argentina? Was there de facto or de jure discrimination in employment, wage policies or elsewhere?

30. Mr. CEVILLE said he would have liked the delegation to be more precise in its presentation. Its explanations of the Argentine legal system had left him confused. States parties to the Covenant were generally divided into two categories: those with a monistic system, where the Covenant was applied automatically, and those with a dualistic system, where the Covenant needed to be integrated into the domestic legislation before it could be enforced. Which system had Argentina chosen?

31. Mr. GRISSA remarked that he had not received a reply to his question concerning the specific measures taken by Argentina to guarantee the rights of the indigenous peoples as a minority. It was not merely a question of restoring their lands; thought needed to be given to how their rights as citizens would be protected.

32. Mr. ANTANOVICH asked whether the indigenous population was regarded as a people in Argentina.

33. Mrs. NASCIMBENE de DUMONT (Argentina) explained that the country had a monistic legal system. Replying to question 8 concerning the indigenous peoples, she repeated that a great deal had been achieved in the wake of the 1994 constitutional reform, particularly regarding recognition of the indigenous inhabitant's right to their own identity, to bilingual education and to ownership of land. That had of compromise required the adoption of legislation and enabling decrees, and the representatives of the indigenous peoples had been involved through INAA. University scholarships had been awarded to students from indigenous communities in an effort to find a short-term or longer-term response to the shortage of teachers speaking indigenous languages. A great many books had also been published in the Mapuche, Kolla and other languages.

34. As to the return of lands to the indigenous communities, the Government had made great strides and had established a register of indigenous lands. Agreements had been concluded with most of the indigenous communities for the transfer to them of public land, particularly in the provinces of Jujuy and Chubut, and shortly in Río Negro. Agreements had been signed with other provinces for regularizing land titles. In the province of Neuquén, over 70,000 hectares had been restored to some dozen Mapuche communities. Most Argentine provinces' indigenous communities had opted for communal possession of land. Regarding the eviction orders received by the Mapuche community in Neuquén province - the so-called "Pulmarí" affair mentioned in question 9, the Government had attached such importance to the matter that the Procurator General had personally defended the Mapuche chief concerned Antonio Salazar.

35. Mr. CHELIA (Argentina), referring to the return of ancestral lands to the Kolla, Wichi, Chobote, Toba, Chulupi and Tapiete communities (question 10), explained that INAA had stepped up its action to find a favourable solution to the problems provoked by the allocation of two parcels of land to those communities. INAA had offered technical and financial assistance to the Salta Provincial Government for the purpose, but had so far received no response. It should also be pointed out that on 19 March 1997 the Federal Government had

bought back 125,000 hectares from the Santiago Estate (Finca Santiago) for the Kolla community.

36. Mrs. NASCIMBENE de DUMONT (Argentina), replying to question 11, said that in 1997 the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) had been created in 1997 although it was mentioned in the 1996 core doc. to formulate national policies and practical measures for combating those phenomena. Some of its duties were to conduct educational and information campaigns, collect and update information on international law, receive complaints of discriminatory practices and apply to the competent judicial or administrative bodies when there was good reason to believe that discriminatory acts had been committed. INADI had already conducted information campaigns and set up a telephone hotline for persons wishing to report discriminatory or racist acts. Many complaints of all sorts of discrimination had already been received and had been followed by concrete measures. For instance, the Argentine Shooting Federation, whose statutes had contained provisions discriminating against women, had been made to amend them. Also, a discotheque in the town of Rosario had been temporarily closed down for denying entry to a black Brazilian citizen.

37. Replying to question 12, she stressed that there was complete equality between men and women under civil, family, commercial, labour and criminal law. The Convention on the Elimination of All Forms of Discrimination against Women had enjoyed constitutional status since 1994. In respect of labour, the law on employment contracts prohibited any discrimination based on sex or civil status. In practice, however, in Argentina as in almost all countries, women's salaries in the private sector were lower than men's. The minimum age for marriage was currently 16 for women and 18 for men.

38. Regarding question 14, pages 37-45 of the written replies contained detailed information on the proportion of women in positions of responsibility in the public and private sectors. Women held senior posts in all ministries, but for cultural reasons, they were still outnumbered by men. It would take time for attitudes to change, and the Government was actively working on the matter.

39. Mr. TEXIER asked what obstacles were preventing Argentina from ratifying the ILO Indigenous and Tribal Peoples Convention (No. 169), and whether a settlement of the Pulmarí dispute was in sight.

40. On the subject of immigrants, article 31 of the Immigration Act prohibited the employment not only of illegal aliens but of certain foreigners residing legally in Argentina. It was to be feared that the situation might lead to acts of discrimination. It would be interesting to discover what the Argentine Government was doing to regularize the situation of persons living illegally and in poverty in Argentina, who could not exercise their rights to health, education or work.

41. Mr. WIMER ZAMBRANO asked the Argentine delegation to indicate, with regard to the indigenous communities, not only the total area of land for which title deeds had been issued, but also the number of hectares claimed by those communities, to be able to judge how far their claims had been met. The 1994 Constitution's recognition of the rights of indigenous peoples was a historic

event. In the nineteenth century Argentina had attempted to wipe out the indigenous peoples and had gone on to ignore them until the advent of Peronism. In determining whether a person belonged to an indigenous community, the very vague concept of race should be replaced by cultural criteria such as language. The indigenous inhabitants must enjoy not only the same rights as other citizens, but specific rights that would enable them to preserve their identity.

42. Mrs. JIMÉNEZ BUTRAGUEÑO requested further information on the role played by older people in handing down the values and culture of the indigenous communities.

43. Mr. MARCHÁN ROMERO asked whether there were non-heterosexual forms of union and whether marriages celebrated in accordance with the laws and customs of the indigenous communities were recognized by the Argentine authorities.

44. Mr. HUNT inquired about the Argentine Government's position in respect of the draft United Nations Declaration on the Rights of Indigenous Peoples.

45. Mrs. NASCIMBENE de DUMONT (Argentina) said the obstacles to the Executive's ratification of ILO Convention No. 169 were about to be removed. It had been the Ministry for Economic Affairs that had raised some objections to certain provisions of the Convention.

46. Many of the criticisms levelled at Argentina with regard to its immigration policy were unjust. It should be remembered that Argentina had always been a country of immigration. Between 1983 and 1992 residence permits had been issued to more than 300,000 foreigners, and in 1998 nearly 18,000 foreigners had obtained such permits. As to immigrants from Bolivia and Peru, in 1998 Argentina had concluded with those two countries agreements for simplifying and facilitating the procedure for regularizing the situation of those countries' citizens, thereby precluding them from being exploited through clandestine work. In the area of health, public hospitals were required to treat all persons, whether Argentines, foreigners or illegal inhabitants. Of course, some hospitals in border areas were swamped at times. With regard to education, in Buenos Aires, for example, all children, including those whose parents' residence situation was irregular, were admitted to pre-school and primary education.

47. The Argentine delegation had taken careful note of Mr. Wimer Zambrano's remarks. True, it was sometimes difficult to determine to what ethnic community a particular person belonged, but that was because many communities had attempted to integrate into Argentine society, thus losing all or part of their cultural characteristics.

48. In Argentina the family was defined as the union between a man and a woman, and there were no plans to amend the Civil Code.

49. Mr. CHELIA (Argentina) added that the only article of the draft United Nations Declaration on the Rights of Indigenous Peoples that posed a real problem was article 3, which stipulated: "Indigenous peoples have the right of self-determination." Most of the States in the Working Group on Indigenous Populations were in favour of a restrictive interpretation of that provision. For its part, Argentina had requested that article 3 explicitly state that the

exercise of that right should not prejudice States' territorial integrity or political independence.

50. Mr. WIMER ZAMBRANO asked why the regulatory text determining the procedures for applying article 75 of the 1994 Constitution had still not been adopted.

51. Mr. HUNT asked whether, in the various ministries, human rights specialists were responsible for ensuring that the Covenant was taken into account in policy formulation. It would also be interesting to know whether the indigenous communities had the right to have their own legal and educational system.

52. Mr. CHELIA (Argentina) said the Government was helping indigenous communities to set up their own schools. However, the education imparted such establishments would need to conform to the minimum educational standards prescribed by the State, in accordance with article 13, paragraph 3, of the Covenant. The Argentine State also recognized the indigenous communities' traditional forms of organization.

53. Mrs. NASCIMBENE de DUMONT (Argentina) said that all outstanding questions would be answered the following day or in the next periodic report.

The meeting rose at 6 p.m.